THE OHIO STAR---Extra.

RAVENNA, THURSDAY, SEPTEMBER 30, 1852.

DOCUMENTS FOR THE TIMES.

FREEDOM NATIONAL; SLAVERY SECTIONAL

SPEECH OF HON. CHAS. SUMNER, OF MASSACHUSETTS,

ON HIS MOTION TO REPEAL THE FUGITIVE SLAVE BILL, IN THE SENATE OF THE UNITED STATES.

THURSDAY, AUGUST 26, 1852.

The Civil and Diplomatic Appropriation Bill being under consideration, the following amendment was moved by the Committee on Finance:

"That where the ministerial officers of the United States have or shall incur extraordinary expenses in executing the laws thereof, the payment of which is not specifically provided for, the President of the United States is authorized to allow the payment thereof, under the special taxation of the district or circuit court of the district in which the said services have been or shall be rendered, to be paid from the appropriation for defraying the expenses of the judiciary."

MR. SUMNER moved the following amendment to the amendment:

"*Provided*, That no such allowance shall be authorized for any expenses incurred in executing the act of September 18, 1850, for the surrender of fugitives from service or labor; which said act is hereby repealed:

On this he took the floor and spoke as follows:

MR. PRESIDENT: Here is a provision for extraordinary expenses incurred in executing the laws of the United States. Extraordinary expenses! Sir, beneath these specious words lurks the very subject on which, by a solemn vote of this body, I was refused a hearing. Here it is; no longer open to the charge of being an "abstraction," but actually presented for practical legislation; not introduced by me, but by one of the important committees of the Senate; not brought forward weeks ago, when there was ample time for discussion, but only at this moment, without any reference to the late period of the session. The amendment, which I now offer, proposes to remove one chief occasion of these extraordinary expenses. And now, at last, among these final crowded days of our duties here, but at this earliest opportunity, I am to be heard; not as a favor, but as a right. The graceful usages of this body may be abandoned, but the established privilege of debate cannot be abridged. Parliamentary courtesy may be forgotten, but Parliamentary law must prevail. The subject is broadly before the Senate. By the blessing of God it shall be discussed.

Sir, a severe lawgiver of early Greece vainly sought to secure permanence for his imperfect institutions, by providing that the citizen who, at any time attempted an alteration or repeal of any part thereof, should appear in the public assembly with a halter about his neck, ready to be drawn if his proposition failed to be adopted. A tyrannical spirit among us, in unconscious imitation of this antique and discarded barbarism, seeks to surround an offensive institution with a similar safeguard. In the existing distemper of the public mind and at this present juncture, no man can enter upon the service which I now undertake, without a personal responsibility, such as can be sustained only by that sense of duty which, under God, is always our best support. That personal responsibility I accept. Before the Senate and the country let me be held accountable for this act, and for every word which I utter.

With me, sir, there is no alternative. Painfully convinced of the unutterable wrongs and woes of slavery; profoundly believing that, according to the true spirit of the Constitution and the sentiments of the fathers, it can find no place under our *National* Government—that it is in every respect *sectional*, and in no respect *national*—that it is always and everywhere the creature and dependent of the *States*, and never anywhere the creature or dependent of the *Nation*, and that the *Nation* can never, by legislative or other act, impart to it any support, under the Constitution of the United States; with these convictions, I could not allow this session to reach its close, without making or seizing an opportunity to declare myself openly against the usurpation, injustice, and cruelty, of the late enactment by Congress for the recovery of fugitive slaves. Full well I know, sir, the difficulties of this discussion, arising from prejudices of opinion and from adverse conclusions, strong and sincere as my own. Full well I know that I am in a small minority, with few here to whom I may look for sympathy or support. Full well I know that I must utter things unwelcome to many in this body, which I cannot do without pain. Full well I know that the institution of slavery in our country, which I now proceed to consider, is as sensitive as it is powerful—possessing a power to shake the whole land with a sensitiveness that shrinks and trembles at the touch. But, while these things may properly prompt me to caution and reserve, they cannot change my duty, or my determination to perform it. For this I willingly forget myself, and all personal consequences. The favor and good-will of my fellow-citizens, of my brethren of the Senate, sir—grateful to me as it justly is—I am ready, if required, to sacrifice. All that I am or may be, I freely offer to this cause.

And here allow me, for one moment, to refer to myself and my position. Sir, I have never been a politician. The slave of principles, I call no party master. By sentiment, education, and conviction, a friend of Human Rights, in their utmost expansion, I have ever most sincerely embraced the Democratic Idea; not, indeed, as represented or professed by any party, but according to its real significance, as transfigured in the Declaration of Independence, and in the injunctions of Christianity. In this Idea I saw no narrow advantages merely for individuals or classes, but the sovereignty of the people and the greatest happiness of all secured by equal laws. Amidst the vicissitudes of public affairs, I trust always to hold fast to this Idea, and to any political party which truly embraces it.

Party does not constrain me; nor is my independence lessened by any relations to the office which gives me a title to be heard on this floor. And here, sir, I may speak proudly. By no effort, by no desire of my own, I find myself a Senator of the United States. Never before have I held public office of any kind. With the ample opportunities of private life I was content. No tombstone for me could bear a fairer inscription than this: "Here lies one who, without the honors or emoluments of public station, did something for his fellow man." From such simple aspirations I was taken away by the free choice of my native Commonwealth, and placed in this responsible post of duty, without personal obligation of any kind, beyond what was implied in my life and published words. The earnest friends, by whose confidence I was first designated, asked nothing from me, and, throughout the long conflict which ended in my election, rejoiced in the position which I most carefully guarded. To all my language was uniform, that I did not desire to be brought forward; that I would do nothing to promote the result; that I had no pledges or promises to offer; that the office should seek me, and not I the office; and that it should find me in all respects an independent man, bound to no party and to no human being, but only, according to my best judgment, to act for the good of all. Again, sir, I speak with pride, both for myself and others, when I add that these avowals found a sympathizing response. In this spirit I have come here, and in this spirit I shall speak to-day.

Rejoicing in my independence and claiming nothing from party ties, I throw myself upon the candor and magnanimity of the Senate. I now ask your attention; but I trust not to abuse it. I may speak strongly; for I shall speak openly and from the strength of my convictions. I may speak warmly; for I shall speak from the heart. But in no event can I forget the amenities which belong to debate, and which especially become this body. Slavery I must condemn with my whole soul; but here I need only borrow the language of slaveholders themselves; nor would it accord with my habits or my sense of justice to exhibit them as the impersonation of the institution—Jefferson calls it the "enormity"—which they cherish. Of them I do not speak; but without fear and without favor, as without impeachment of any person, I assail this wrong. Again, sir, I may err; but it will be with the Fathers. I plant myself on the ancient ways of the Republic, with its grandest names, its surest landmarks, and all its original altar-fires about me.

And now, on the very threshold, I encounter the objection that there is a final settlement, in principle and substance, of the question of Slavery, and that all discussion of it is closed. Both the old political parties of the country, by formal resolutions, have united in this declaration. On a subject which for years has agitated the public mind; which yet palpitates in every heart and burns on every tongue; which, in its immeasurable importance, dwarfs all other subjects; which, by its constant and gigantic presence, throws a shadow across those Halls; which at this very moment calls for appropriations to meet extraordinary expenses it has caused, they have imposed the rule of silence. According to them, sir, we may speak of everything except that alone, which is most present in all our minds.

To this combined effort I might fitly reply, that, with flagrant inconsistency, it challenges the very discussion which it pretends to forbid. Such a declaration, on the eve of an election, is, of course, submitted to the consideration and ratification of the people. Debate, inquiry, discussion, are the necessary consequence. Silence becomes impossible. Slavery, which you profess to banish from the public attention, openly by your invitation, enters self; and, if it think proper, it may revise or amend, or absolutely undo the work of its predecessors.—The laws of the Medes and Persians are proverbially said to have been unalterable; but they stand forth in history as a single example of such irrational defiance of the true principles of all law.

To make a law final, so as not to be reached by Congress, is, by mere legislation, to fasten a new provision on the Constitution. Nay, more; it gives to the law a character which the very Constitution does not possess. The wise fathers did not treat the country as a Chinese foot, never to grow after infancy; but, anticipating Progress, they declared expressly that their Great Act is not final. According to the Constitution itself, there is not one of its existing provisions—not even that with regard to fugitives from labor—which may not at all times be reached by amendment, and thus be drawn into debate. This is rational and just. Sir, nothing from man's hands, nor law, nor constitution, can be final. Truth alone is final.

Inconsistent and absurd, this effort is tyrannical also. The responsibility for the recent Slave Act and for Slavery everywhere within the jurisdiction of Congress necessarily involves the right to discuss them. To separate these is impossible. Like the twenty-fifth rule of the House of Representatives against petitions on Slavery—now repealed and dishonored—the Compromise, as explained and urged, is a curtailment of the actual powers of legislation, and a perpetual denial of the indisputable principle that the right to deliberate is co-extensive with the responsibility for an act. To sustain Slavery, it is now proposed to trample on *free speech*. In any country this would be grievous; but here, where the Constitution expressly provides against abridging freedom of speech, it is a special outrage. In vain do we condemn the despotisms of Europe, while we borrow the rigors with which they repress Liberty, and guard their own uncertain power. For myself, in no factious spirit, but solemnly and in loyalty to the Constitution, as a Senator of Massachusetts, I protest against this wrong. On Slavery, as on every other subject, I claim the right to be heard. That right I cannot, I will not abandon. "Give me the liberty to know, to utter, and to argue freely, above all liberties." These are the glowing words which flashed from the soul of John Milton in his struggles with English tyranny. With equal fervor they should be echoed now by every American, not already a slave.

But, sir, this effort is impotent as tyrannical.—The convictions of the heart cannot be repressed. The utterances of conscience must be heard. They break forth with irrepressible might. As well attempt to check the tides of Ocean, the currents of the Mississippi, or the rushing waters of Niagara. The discussion of Slavery will proceed, wherever two or three are gathered together—by the fireside, on the highway, at the public meeting, in the church. The movement against Slavery is from the Everlasting Arm. Even now it is gathering its forces, soon to be confessed everywhere. It may not yet be felt in the high places of office and power; but all who can put their ears humbly to the ground, will hear and comprehend its incessant and advancing tread.

The relations of the Government of the United States—I speak of the National Government—to Slavery, though plain and obvious, are constantly misunderstood. A popular belief at this moment makes Slavery a national institution, and, of course, renders its support a national duty. The extravagance of this error can hardly be surpassed. An institution, which our fathers most carefully omitted to name in the Constitution, which, according to the debates in the Convention, they refused to cover with any "sanction," and which, at the original organization of the Government, was merely *sectional*, existing nowhere on the *national* territory, is now above all other things blazoned as national. Its supporters plume themselves as national. The old political parties, while upholding it, claim to be national. A National Whig is simply a Slavery Whig, and a National Democrat is simply a Slavery Democrat, in contradistinction to all who regard Slavery as a sectional institution, within the exclusive control of the States, and with which the nation has nothing to do.

As Slavery assumes to be national, so, by an equally strange perversion, Freedom is degraded to be sectional, and all who uphold it, under the national Constitution, share this same epithet. The honest efforts to secure its blessings, everywhere within the jurisdiction of Congress, are scouted as sectional; and this cause, which the founders of our National Government had so much as heart, is called *sectionalism*. These terms, now belonging to the commonplaces of political speech, are adopted and misapplied by most persons without reflection. But herein is the power of Slavery. According to a curious tradition of the French language, Louis XIV, the grand monarch, by an accidental error of speech, among supple courtiers, changed the gender of a noun; but Slavery has done more than this. It has changed word for word. It has taught many to say *national*, instead of *sectional*, and *sectional* instead of *national*.

Slavery national! Sir, this is all a mistake and absurdity, fit to take a place in some new collection of Vulgar Errors, by some other Sir Thomas Browne, with the ancient but exploded stories, that the toad has a stone in its head, and that ostriches digest iron. According to the true spirit of the Constitution, and the sentiments of the Fathers, *Slavery* and not Freedom is *sectional*, while *Freedom* and not Slavery is *national*. On this unanswerable proposition I take my stand. And here commences my argument.

The subject presents itself under *two* principal heads: FIRST, *the true relations of the National Government to Slavery*, wherein it will appear that there is no national fountain out of which Slavery can be derived, and no national power, under the Constitution, by which it can be supported. Enlightened by this general survey, we shall be prepared to consider, SECONDLY, *the true nature of the provision for the rendition of fugitives from labor*, and herein especially the unconstitutional and offensive legislation of Congress in pursuance thereof.

I. And now for the TRUE RELATIONS OF THE NATIONAL GOVERNMENT TO SLAVERY. These will be readily apparent, if we do not neglect well-established principles.

If Slavery be national, if there be any power in the National Government to uphold this institution—as in the recent Slave Act—it must be by virtue of the Constitution. Nor can it be by mere inference, implication, or conjecture. According to the uniform admission of courts and jurists in Europe, again and again promulgated in our country, Slavery can be derived only from clear and special recognition. "The state of Slavery," said Lord Mansfield, pronouncing judgment in the great case of Somersett, "is of such a nature, that it is incapable of being introduced on any reasons moral or political, *but only by positive law*. It is so odious, that *nothing can be suffered to support it* but POSITIVE LAW."—(Howell's State Trials, vol. 20, p. 82.) And a slaveholding tribunal, the Supreme Court of Mississippi, adopting the same principle, has said: "Slavery is condemned by reason and the laws of nature. It exists and can exist *only* through municipal regulations."—(*Harry vs. Decker*, Walker R., 42.)

And another slaveholding tribunal, the Supreme Court of Kentucky, has said:

"We view this as a right existing by *positive law* of a municipal character, without foundation in the law of nature or the unwritten and common law."—(*Rankin vs. Lydia*, 2 Marshall, 470.)

Of course every power to uphold Slavery must have an origin as distinct as that of Slavery itself. Every presumption must be as strong against such a power as against Slavery. A power so peculiar and offensive, so hostile to reason, so repugnant to the law of nature and the inborn Rights of Man; which despoils its victims of the fruits of their labor; which substitutes concubinage for marriage; which abrogates the relation of parent and child; which, by a denial of education, abases the intellect, prevents a true knowledge of God, and murders the very soul; which, amidst a plausible physical comfort, degrades man, created in the divine image, to the level of a beast;—such a power, so eminent, so transcendent, so tyrannical, so unjust, can find no place in any system of Government, unless by virtue of *positive sanction*. It can spring from no doubtful phrases. It must be declared by unambiguous words, incapable of a double sense.

Slavery, I now repeat, is not mentioned in the Constitution. The name Slave does not pollute this Charter of our Liberties. No "positive" language gives to Congress any *power* to make a Slave or to hunt a Slave. To find even any seeming sanction for either, we must travel, with doubtful footsteps, beyond its express letter, into the region of interpretation. But here are rules which cannot be disobeyed. With electric might for Freedom, they send a pervasive influence through every provision, clause, and word of the Constitution. Each and all make Slavery impossible as a national institution. They efface from the Constitution every fountain out of which it can be derived.

First and foremost, is the *Preamble*. This discloses the prevailing objects and principles of the Constitution. This is the vestibule through which all must pass, who would enter the sacred temple. Here are the inscriptions by which they are earliest impressed. Here they first catch the genius of the place. Here the proclamation of Liberty is first heard. "We the People of the United States," says the Preamble, "in order to form a more perfect Union, *establish justice*, insure domestic tranquillity, provide for the common defence, *promote the general welfare, and secure the blessings of Liberty* to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." Thus, according to undeniable words, the Constitution was ordained, not to establish, secure,

Gouverneur Morris, of Pennsylvania, broke forth in the language of an Abolitionist: "*He never would concur in upholding domestic slavery*. It was a nefarious institution. It was the curse of Heaven on the State where it prevailed." Oliver Ellsworth, of Connecticut, said: "The morality or wisdom of Slavery are considerations belonging to the States themselves." According to him, Slavery was sectional.

At a later day, a discussion ensued on the clause touching the African slave trade, which reveals the definitive purposes of the Convention. From the report of Mr. Madison we learn what was said. Elbridge Gerry, of Massachusetts, "thought we had nothing to do with the conduct of the States as to Slavery, *but we ought to be careful not to give any sanction to it*." According to these words, he regarded Slavery as sectional, and would not make it national. Roger M. Sherman, of Connecticut, "was opposed to any tax on slaves imported, as making the matter worse, *because it implied they were property*." He would not have Slavery national. After debate, the subject was committed to a committee of eleven, who subsequently reported a substitute, authorizing "a tax on such migration or importation, at a rate *not exceeding the average of duties laid on imports*." This language, classifying *persons* with merchandise, seemed to imply a recognition that they were *property*. Mr. Sherman at once declared himself "against this part, *as acknowledging men to be property*, by taxing them as such under the character of slaves." Mr. Gorham "thought Mr. Sherman should consider the duty *not as implying that slaves are property*, but as a discouragement to the importation of them." Mr. Madison, in mild juridical phrase, "*thought it wrong to admit in the Constitution the idea that there could be property in man*." After discussion, it was finally agreed to make the clause read:

"But a tax or duty may be imposed on such importation, not exceeding ten dollars *for each person*."

The difficulty then seemed to be removed, and the whole clause was adopted. This record demonstrates that the word "persons" was employed in order to show that slaves, everywhere under the Constitution, were always to be regarded as *persons*, and not as *property*, and thus to exclude from the Constitution all idea that there can be property in man. Remember well, that Mr. Sherman was opposed to the clause in its original form, "as acknowledging men to be *property*;" that Mr. Madison was also opposed to it, because he "thought it *wrong* to admit in the Constitution the idea that there could be property in man;" and that, after these objections, the clause was so amended as to exclude the idea. But Slavery cannot be national, unless this idea is distinctly and unequivocally admitted into the Constitution.

Nor is this all. In the Massachusetts Convention, to which the Constitution when completed, was submitted for ratification, a veteran of the Revolution, General Heath, openly declared that, according to his view, Slavery was sectional, and not national. His language was pointed. "I apprehend," he says, "that it is not in our power *to do anything for or against those who are in Slavery in the Southern States*. No gentleman within these walls detests every idea of Slavery more than I do; it is generally detested by the people of this Commonwealth; and I ardently hope the time will soon come, when our brethren in the Southern States will view it as we do, and put a stop to it; but to this we have no right to compel them. Two questions naturally arise. *If we ratify the Constitution, shall we do any thing by our act to hold the blacks in Slavery—or shall we, become partakers of other men's sins? I think neither of them*."

Afterwards, in the first Congress under the Constitution, on a motion, which was much debated, to introduce into the Impost Bill a duty on the importation of slaves, the same Roger M. Sherman, who in the National Convention had opposed the idea of property in man, authoritatively exposed the true relations of the Constitution to Slavery. His language was that "the Constitution does not consider these persons as property; it speaks of them as persons."

Thus distinctly and constantly, from the very lips of the framers of the Constitution, we learn the falsehood of the recent assumptions in favor of Slavery and in derogation of Freedom.

Thirdly. According to a familiar rule of interpretation, all laws concerning the same matter, *in pari materia*, are to be construed together. By the same reason, *the grand political acts of the Nation are to be construed together*, giving and receiving light from each other. Earlier than the Constitution was the Declaration of Independence, embodying in immortal words, those primal truths to which our country pledged itself with its baptismal vows as a Nation. "We hold these truths to be self-evident," says the Nation, "that all men are created equal, that they are endowed by their Creator with certain inalienable rights; that among them are life, *liberty*, and the pursuit of happiness; that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed." But this does not stand alone. There is another national act of similar import. On the successful close of the Revolution, the Continental Congress, in an address to the people, repeated the same lofty truth. "Let it be remembered," said the Nation again, "that it has ever been the pride and the boast of America, *that the rights for which she has contended were the rights of human nature*. By the blessing of the Author of *these rights*, they have prevailed over all opposition, and FORM THE BASIS of thirteen independent States." Such were the acts of the Nation in its united capacity. Whatever may be the privileges of States in their individual capacities, within their several local jurisdictions, no power can be attributed to the Nation, in the absence of positive, unequivocal grant, inconsistent with these two national declarations. Here, sir, is the national heart, the national soul, the national will, the national voice, which must inspire our interpretation of the Constitution, and enter into and diffuse itself through all the national legislation. Thus again is Freedom national.

Fourthly. Beyond these is a principle of the common law, clear and indisputable, a supreme rule of interpretation from which in this case there can be no appeal. In any question under the Constitution *every word is to be construed in favor of liberty*. This rule, which commends itself to the natural reason, is sustained by time honored maxims of our early jurisprudence. Blackstone aptly expresses it, when he says that "the law is always ready to catch at anything in favor of liberty."—(12 Black. Com., 94.) The rule is repeated in various forms. *Favores ampliandi sunt; odia restringenda*. Favors are to be amplified; hateful things to be restrained. *Lex Angliæ est lex misericordiæ*. The law of England is a law of mercy. *Angliæ jura in omni casu libertati dant favorem*. The laws of England in every case show favor to liberty. And this sentiment breaks forth in natural, though intense force, in the maxim: *Impius et crudelis judicandus est qui libertati non favet*. He is to be adjudged impious and cruel who does not favor liberty. Reading the Constitution in the admonition of these rules, again I say Freedom is national.

Fifthly. From a learned judge of the *Supreme Court of the United States*, in an opinion of the Court, we derive the same lesson. In considering the question, whether a State can prohibit the importation of slaves as merchandize, and whether Congress, in the exercise of its power to regulate commerce among the States, can interfere with the slave-trade between the States, a principle has been enunciated, which, while protecting the trade from any intervention of Congress, declares openly that the Constitution acts upon no man as property. Mr. Justice McLean says: "If slaves are considered in some of the States as merchandise, that cannot divest them of the leading and controlling quality of persons by which they are designated in the Constitution. The character of property is given them by the local law. This law is respected, and all rights under it are protected by the Federal authorities; *but the Constitution acts upon slaves as* PERSONS, *and not as property*." * * * "The power over Slavery belongs to the States respectively. In its local character, and in its effects."—(Groves vs. Slaughter, 15 Peters R., 507). Here again Slavery is sectional, while Freedom is national.

Sir, such briefly are the rules of interpretation which, as applied to the Constitution, fill it with the breath of Freedom,

Driving far off each thing of sin and guilt.

To the history and prevailing sentiments of the times we may turn for further assurance. In the spirit of Freedom the Constitution was formed. In this spirit our Fathers always spoke and acted. In this spirit the National Government was first organized under Washington. And here I recall a scene in itself a touchstone of the period, and an example for us, upon which we may look with pure national pride, while we learn anew the relations of the National Government to Slavery.

The Revolution had been accomplished. The feeble Government of the Confederation had passed. The Constitution, slowly matured in a National Convention, discussed before the people, defended by masterly pens, had been already adopted. The thirteen States stood forth a nation, wherein was unity without consolidation, and diversity without discord. The hopes of all were anxiously hanging upon the new order of things and the mighty procession of events. With signal unanimity Washington was chosen President. Leaving his home at Mount Vernon, he repaired to New York, where the first Congress had already commenced its session, to assume his place as elected Chief of the Republic. On the thirtieth of April, 1789, the organization of the Government was completed by his inauguration. Entering the Senate Chamber, where the two Houses were assem- that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States."

Over the President, on this high occasion, floated the National Flag, with its stripes of red and its stars on a field of blue. As his patriot eyes rested upon the glowing ensign, what currents must have rushed swiftly through his soul! In the early days of the Revolution, in those darkest hours about Boston, after the battle of Bunker Hill, and before the Declaration of Independence, the thirteen stripes had been first unfurled by him, as the emblem of Union among the Colonies for the sake of Freedom. By him, at that time, they had been named the Union Flag. Trial, struggle, and war, were now ended, and the Union, which they first heralded, was unalterably established. To every beholder these memories must have been full of pride and consolation. But looking back upon the scene, there is one circumstance which, more than all its other associations, fills the soul—more even than the suggestions of Union which I prize so much. AT THIS MOMENT, WHEN WASHINGTON TOOK HIS FIRST OATH TO SUPPORT THE CONSTITUTION OF THE UNITED STATES, THE NATIONAL ENSIGN, NOWHERE WITHIN THE NATIONAL TERRITORY, COVERED A SINGLE SLAVE. Then, indeed, was Slavery sectional and Freedom national.

On the sea, an execrable piracy, the trade in slaves, was still, to the national scandall, tolerated under the national flag. In the States, as a sectional institution, beneath the shelter of local laws, Slavery unhappily found a home. But in the only territories at this time belonging to the Nation, the broad region of the Northwest, it had already, by the Ordinance of Freedom, been made impossible, even before the adoption of the Constitution. The District of Columbia, with its fatal incumberance, had not yet been acquired.

The Government thus organized was Anti-Slavery in character. Washington was a slaveholder; but it would be unjust to his memory not to say that he was an Abolitionist also. His opinions do not admit of question. Only a short time before the formation of the National Constitution, he had declared, by letter, "that it was among his first wishes to see some plan adopted by which Slavery may be abolished by law;" and again, in another letter, "that, in support of any legislative measures for the abolition of slavery, his suffrage should not be waneing;" and still further, in conversation with a distinguished European Abolitionist, a travelling propagandist of Freedom, Brissot de Warville, recently welcomed to Mount Vernon, he had openly announced that promote this object in Virginia, "he desired the formation of a SOCIETY, and that he would second it." By this authentic testimony, he takes his place with the early patrons of Abolition societies.

By the side of Washington, as standing beneath national flag he swore to support the Constitution, were illustrious men, whose lives and recorded words now rise in judgment. There was John Adams, the Vice President—great vindicator and final negotiator of our national independence—whose soul, flaming with freedom, broke forth in the early declaration that "consenting to Slavery is a sacrilegious breach of trust," and whose immitigable hostility to this wrong has been made immortal to his descendants. There also was a companion in arms and detached friend, of incomparable genius, the yet youthful Hamilton, who, as a member of the Abolition Society of New York, had only recently united in a solemn petition for those who, "though *free by the laws of God*, are held in Slavery *by the laws of the State*." There, too, was a noble spirit, the ornament of his country, the exemplar of courage, truth, and virtue, who, like the sun, ever held an unerring course, John Jay. Filling the important post of Minister of Foreign Affairs under the Confederation, he found time to organize the Abolition of Society of New York, and to act as its President until, by the nomination of Washington, he became Chief Justice of the United States. In his sight Slavery was an "iniquity," "a sin of crimson dye," against which ministers of the gospel testify, and which the Government should seek to abolish. "Were I in the Legislature," he wrote, "I would present a bill for this purpose with great care, and I would never cease moving it till it became a law or I ceased to be a member. Till America comes into this measure, her prayers to Heaven will be impious."

But they were not alone. The convictions and earnest aspirations of the country were with them. At the North these were broad and general. At the South they found fervid utterance from slaveholders. By early and precocious efforts for "total emancipation," the Author of the Declaration of Independence placed himself foremost among the Abolitionists of the land. In language now familiar to all, and which can never die, he perpetually denounced Slavery. He exposed its pernicious influences upon master as well as slave; declared that the love of justice and the love of country pleaded equally for the slave, and that the "abolition of domestic slavery was the greatest object of desire." He believed that the "sacred side was gaining daily recruits," and confidently looked to the young for the accomplishment of this good work. In fitful sympathy with Jefferson was another honored son of Virginia, the Orator of Liberty, Patrick Henry, who, while confessing that he was a master of slaves, said: "I will not, I cannot justify it. However culpable my conduct, I will so far pay my devoir to virtue, as to own the excellence and rectitude of her precepts, and lament my want of conformity to them." At this very period, in the Legislature of Maryland, on a bill for the relief of oppressed slaves, a young man, afterwards by his consummate learning and forensic powers the acknowledged head of the American bar, William Pinkney, in a speech of earnest, truthful eloquence—better far for his memory than his transcendent professional fame—branded Slavery as iniquitous and most dishonorable;" "founded in a disgraceful traffic;" "as shameful in its continuance as in its origin;" and he openly declared, that, "by the eternal principles of natural justice, no master in the State has a right to hold his slave in bondage a single hour."

Thus at this time spoke the NATION. The CHURCH also joined its voice. And here, amidst the diversities of religious faith, it is instructive to observe the general accord. The Quakers first bore their testimony. At the adoption of the Constitution their whole body, under the early teaching of George Fox, and by the crowning exertions of Benezet and Woolman, had become an organized band of Abolitionists, penetrated by the conviction that it was unlawful to hold a fellow-man in bondage. The Methodists, numerous, earnest and faithful, never ceased by their preachers to proclaim the same truth. Their rules in 1788 denounced in formal language "the buying or selling of bodies and souls of men, women, and children, with an intention to enslave them." The words of their great apostle, John Wesley, were constantly repeated. On the eve of the National Convention, the burning tract was circulated in which he exposes American slavery as the "vilest" of the world —"such Slavery as is not found among the Turks at Algiers"—and, after declaring "liberty the birthright of every human creature, of which no human law can deprive him," he pleads: "If, therefore, you have any regard to justice, (to say nothing of mercy or the revealed law of God,) render unto all their due. Give liberty to whom liberty is due, that is, to every child of man, to every partaker of human nature." At the same time, the Presbyterians, a powerful religious body, inspired by the principles of John Calvin, in more moderate language, but by a public act, recorded their judgment, recommending "to all the people under their care to use the most prudent measures consistent with the interest and the state of civil society, *to procure eventually the final abolition of Slavery in America*." The Congregationalists of New England, also of the faith of John Calvin, and with the hatred of Slavery belonging to the great non-conformist, Richard Baxter, were sternly united against this wrong. As early as 1776, Samuel Hopkins, their eminent leader and divine, published his tract showing it to be the Duty and Interest of the American States to Emancipate all their African slaves, and declaring that "Slavery is in every instance wrong, unrighteous, and oppressive—a very great and crying sin—there being nothing of the kind equal to it on the face of the earth." And, in 1791, shortly after the adoption of the Constitution, the second Jonathan Edwards, a twice-honored name, in an elaborate discourse often published, called upon his country, "in the present blaze of light" on the injustice of Slavery, to prepare the way for "its total abolition." This he gladly thought at hand. "If we judge of the future by the past," said the celebrated preacher, "within fifty years from this time it will be as shameful for a man to hold a negro slave as to be guilty of common robbery or theft."

Thus, at this time, the Church, in harmony with the Nation, by its leading denominations, Quakers, Methodists, Presbyterians, and Congregationalists, thundered against Slavery. The COLLEGES were in unison with the Church. Harvard University spoke by the voice of Massachusetts, which had already abolished Slavery. Dartmouth College, by one of its learned professors, claimed for the slaves "equal privileges with the whites." Yale College, by its President, the eminent divine, Ezra Stiles, became the head of the Abolition Society of Connecticut. And the University of William and Mary, in Virginia, testified its sympathy with this cause at this very time, by conferring upon Granville Sharp, the acknowledged chief of British Abolitionists, the honorary degree of Doctor of Laws.

The LITERATURE of the land, such as then existed, agreed with the Nation, the Church and the College. Franklin, in the last literary labor of his

their constitution of Government, have declared to be the inalienable birthright of man."

Such, sir, at the adoption of the Constitution and at the first organization of the National Government, was the outspoken, unequivocal heart of the country. Slavery was abhorred. Like the slave trade, it was regarded as temporary; and, by many, it was supposed that they would both disappear together. Voices of Freedom filled the air. The patriot, the Christian, the scholar, the writer, vied in loyalty to this cause. All were Abolitionists.

Glance now at the earliest Congress under the Constitution. From various quarters memorials were presented to this body against Slavery. Among these was one from the Abolition Society of Virginia, wherein Slavery is pronounced "not only an odious degradation, but an outrageous violation of one of the most essential rights of human nature, and utterly repugnant to the precepts of the Gospel." Still another, of a more important character, came from the Abolition Society of Pennsylvania, and was signed by Benjamin Franklin, as President. This venerable man, whose active life had been devoted to the welfare of mankind at home and abroad—who, both as philosopher and statesman, had arrested the admiration of the world—who had ravished the lightning from the skies and the sceptre from a tyrant—who, as a member of the Continental Congress, had set his name to the Declaration of Independence and as a member of the National convention, had again set his name to the Constitution—in whome more, perhaps, than in any other person, was embodied the true spirit of American institutions, at once practical and humane—than whom no one could be more familiar with the purposes and aspirations of the founders—this veteran, eighty-four years of age, within a few months of his death, now appeared by petition at the bar of that Congress, whose powers he had helped to define and establish. This was the last political act of his long life.—Listen to the prayer of Franklin:

"Your memorialists, particularly engaged in attending to the distresses arising from Slavery, believe it to be their indispensable duty to present this subject to your notice.—They have observed with real satisfaction that many important and salutary powers are vested in you for promoting the welfare and securing the blessings of liberty to the people of the United States; and as they conceive that these blessings ought rightfully to be administered, *without distinction of color*, to all discriptions of people, *so they indulge themselves in the pleasing expectation that nothing which can be done for the relief of the unhappy objects of their care, will be either omitted or delayed*." Under these impressions they earnestly entreat your serious attention to the subject of Slavery; *that you will be pleased to countenance the restoration of liberty to those unhappy men, who alone, in this land of Freedom, are degraded into perpetual bondage*, and who, amidst the general joy of surrounding freemen, are groaning in servile subjection; that you will promote mercy and justice towards this distressed race and *that you will step to the very verge of the powers vested in you for DISCOURAGING every species of traffic in the persons of our fellow men*."

Important words! In themselves a key-note of the times. From his grave Franklin seems still to call upon Congress *to step to the very verge of the powers vested in it to* DISCOURAGE SLAVERY; and, in making this prayer, he proclaims the true national policy of the Fathers. Not encouragement, but discouragement of Slavery was their rule.

Sir, enough has been said to show the sentiment which, like a vital air, surrounded the National Government as it stepped into being. In the face of this history, and in the absence of any positive sanction, it is absurd to suppose that Slavery, which under the Confederation was merely sectional, was now constituted a national institution. But there is yet another link in the argument.

In the discussions which took place in the local conventions on the adoption of the Constitution, a sensitive desire was manifested to surround all persons under the Constitution with additional safeguards. Fears were expressed from the supposed indefiniteness of some of the powers conceded to the National Government, and also from the absence of a Bill of Rights. Massachusetts, on ratifying the Constitution, proposed a series of amendments, at the head of which was this, characterized by Samuel Adams, in the Convention as "a summary of a Bill of Rights:"

"That it be explicitly declared, that all powers not expressly delegated by the aforesaid Constitution are reserved to the several States, to be by them exercised."

Virginia, South Carolina, and North Carolina, with minorities in Pennsylvania and Maryland, united in this proposition. In pursuance of these recommendations, the first Congress presented for adoption the following article, which, being ratified by a proper number of States, became a part of the Constitution, as the 10th amendment:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Stronger words could not be employed to limit the power under the Constitution, and to protect the people from all assumptions of the National Government, particularly in derogation of Freedom. Its guardian character commended it to the sagacious mind of Jefferson, who said, "I consider the foundation corner-stone of the Constitution of the United States to be laid upon the tenth article of the amendments." And Samuel Adams, ever watchful for Freedom, said: "It removes a doubt which many have entertained respecting the matter, and gives assurance that, if any law made by the Federal Government shall be extended beyond the power granted by the Constitution, and inconsistent with the Constitution of this State, it will be an error, and adjudged by the courts of law to be void."

Beyond all question the National Government, ordained by the Constitution, is not general or universal; but special and particular. It is a Government of limited powers. It has no power which is not delegated. Especially is this clear with regard to an institution like Slavery. The Constitution contains no power to make a King or to support kingly rule. With similar reason it may be said, that it contains no power to make a slave or to support a system of Slavery. The absence of all such power is hardly more clear in one case than in the other.

At the risk of repetion, but for the sake of clearness, review now this argument, and gather it together. Considering that Slavery is of such an offensive character that it can find sanction only in "positive law," and that it has no such "positive" sanction in the Constitution; that the Constitution, according to its Preamble, was ordained "to establish justice" and "secure the blessings of liberty;" that, in the Convention which framed it, and also elsewhere at the time, it was declared not to sanction Slavery; that, according to the Declaration of Independence and the Address of the Continental Congress, the Nation was dedicated to "liberty," and the "rights of human nature;" that, according to the principles of the common law, the Constitution must be interpreted openly, actively, and perpetually, for Freedom; that, according to the decision of the Supreme Court, it acts upon slaves, *not as property*, but as PERSONS; that, at the first organization of the National Government under Washington, Slavery had no national favor, and existed nowhere beneath the national flag or on the national territory, but was openly condemned by the Nation, the Church, the Colleges, and Literature of the time, and finally, that, according to an Amendment of the Constitution, the National Government can only exercise powers delegated to it, among which there is none to support Slavery; considering these things, sir, it is impossible to avoid the single conclusion that Slavery is in no respect a national institution, and that the Constitution nowhere upholds property in man.

But there is one other special provision of the Constitution, which I have reserved to this stage, not so much from its superior importance, but because it may fitly stand by itself.—This alone, if practically applied, would carry Freedom to all within its influence. It is an amendment proposed by the first Congress, as follows:

"No person shall be deprived of life, *liberty*, or property, *without due process of law*."

Under this ægis the liberty of every person within the national jurisdiction is unequivocally placed. I say of every person. Of this there can be no question. The word "person" in the Constitution embraces every human being within its sphere, whether Caucassian, Indian, or African, from the President to the slave. Show me a person, no matter what his condition, or race, or color, within the national jurisdiction, and I confidently claim for him this protection. The natural meaning of the clause is clear, but a single fact of its history places it in the broad light of noon. As originally recommended by North Carolina and Virginia, it was restrained to the *freeman*. Its language was, "No *freeman* ought to be deprived of his life, *liberty*, or property, but by the law of the land." In rejecting this limitation, the authors of the amendment revealed their purpose, that no person, under the National Government, of whatever character, shall be deprived of liberty without due process of law; that is, without due presentment, indictment, or other judicial proceedings. Here by this Amendment is an express guaranty of Personal Liberty, and an express prohibition against its invasion anywhere, at least within the national jurisdiction.

Sir, apply these principles, and Slavery will again be as when Washington took his first oath as President. The Union Flag of the Republic will become once more the flag of Freedom, and at all points within the national jurisdiction will refuse to cover a slave. Beneath its beneficent folds, wherever it is carried, on land or sea, Slavery will disappear, like darkness under the arrows of the ascending sun—like the Spirit of Evil before the Angel of the Lord.

In all national territories Slavery will be impossible.

On the high seas, under the national flag, Slavery will be impossible.

In the District of Columbia Slavery will instantly cease.

Inspired by these principles, Congress can give no sanction to Slavery by the admission of new Slave States.

Nowhere under the Constitution, can the Nation, by legislation or otherwise, support Slavery, hunt slaves, or hold property in man.

Such, sir, are my sincere convictions. According to the Constitution, as I understand it, the light of the Past and of its true principles, there is no other conclusion which is rational or tenable; which does not defy the authoritative rules of interpretation; which does not falsify indisputable facts of history; which does not affront the public opinion in which it had its birth; and which does not dishonor the memory of the Fathers. And yet the convictions are now placed under formal ban by politicians of the hour. The generous sentiments which filled the early patriots, and which impressed upon the Government they founded, as upon the coin they circulated, the image and superinscription of LIBERTY, have lost their power. The slave-masters, few in number, amounting to about 300,000, according to the recent census, have succeeded in dictating the policy of the National Government, and have written SLAVERY on its front. And now an arrogant and unrelenting ostracism is applied; not only to all who express themselves against Slavery, but to every man who is unwilling to be the menial of Slavery. A novel test for office is introduced, which would have excluded all the Fathers of the Republic—even Washington, Jefferson, and Franklin! Yes, sir. Startling as it may be; but indisputable. Could these revered demigods of history once again descend upon the earth, and mingle in our affairs, not one of them could receive a nomination from the National Convention of either the two old political parties! Out of the convictions of their hearts and the utterances of their lips against Slavery they would be condemned.

This single fact reveals the extent to which the National Government has departed from its true course and its great examples. For myself, I know no better aim under the Constitution, than to bring the Government back to the precise position on this question which it occupied on the auspicious morning of its first organization under Washington:

Cursus iterare
Relictos;

that the sentiments of the Fathers may again prevail with our rulers, and that the National Flag may nowhere shelter Slavery.

To such as count this aspiration unreasonable let me commend a renowned and life-giving precedent of English history. As early as the days of Queen Elizabeth, a courtier had boasted that the air of England was too pure for a slave to breathe, and the common law was said to forbid Slavery. And yet in the face of this vaunt, kindred to that of our Fathers, and so truly honorable, slaves were introduced from the West Indies. The custom of slavery gradually prevailed. Its positive legality was affirmed, in professional opinions, by two eminent lawyers, Talbot and Yorke, each afterwards Lord Chancellor. It was also affirmed on the bench by the latter as Lord Hardwicke. England was already a Slave State. The following advertisement, copied from a London newspaper, the *Public Advertiser*, of Nov. 22d, 1769, shews that the journals there were disfigured as some of ours, even in the District of Columbia:

"To be sold, a black girl, the property of J. B., eleven years of age, who is extremely handy, works at her needle tolerably, and speaks English perfectly well; is of an excellent temper and willing disposition. Enquire of her Owner at the Angel Inn, behind St. Clement's Church, in the Strand."

At last, only three years after this advertisement, in 1772, the single question of the legality of Slavery was presented to Lord Mansfield, on a writ of *Habeas Corpus*. A poor negro, named Somersett, brought to England as a slave, became ill, and with an inhumanity disgraceful even to slavery, was turned adrift upon the world. Through the charity of an estimable man, the eminent Abolitionist, Granville Sharpe, he was restored to health, when his unfeeling and avaricious master again claimed him as a bondman. The claim was repeled. After an elaborate and protracted discussion in Westminster Hall, marked by rare learning and ability, Lord Mansfield, with discreditable reluctance, sul-

banished from the national jurisdiction, it will cease to vex our national politics. It may linger in the States as a local institution; but it will no longer engender national animosities, when it no longer demands national support.

II. From this general review of the relations of the National Government to Slavery, I pass to the consideration of the TRUE NATURE OF THE PROVISION FOR THE SURRENDER OF FUGITIVES FROM LABOR, embracing an examination of this provision in the Constitution, and especially of the recent act of Congress in pursuance thereof. And here, as I begin this discussion, let me bespeak anew your candor. Not in prejudice, but in the light of history and of reason, let us consider this subject. The way will then be easy and the conclusion certain.

Much error arises from the exaggerated importance now attached to this provision, and from the assumptions with regard to its origin and primitive character. It is often asserted that it was suggested by some special difficulty, which had become practically and extensively felt, anterior to the Constitution. But this is one of the myths or fables with which the supporters of Slavery have surrounded their false god. In the Articles of Confederation, while provision is made for the surrender of fugitive criminals, nothing is said of fugitive slaves or servants; and there is no evidence in any quarter, until after the National Convention, of any hardship or solicitude on this account. No previous voice was heard to express desire for any provision on the subject. The story to the contrary is a modern fiction.

I put aside as equally fabulous the common saying that this provision was one of the original compromises of the Constitution and an essential condition of Union. Though sanctioned by eminent judicial opinions, it will be found that this statement has been hastily made, without any support in the records of the Convention, the only authentic evidence of the compromises; nor will it be easy to find any authority for it in any contemporary document, speech, published letter or pamphlet of any kind. It is true that there were compromises at the formation of the Constitution, which were the subject of anxious debate; but this was not of them.

There was a compromise between the small and large States, by which equality was secured to all the States in the Senate. There was another compromise finally carried, under threats from the South, *on the motion of a New England member*, by which the Slave States were allowed Representatives according to the whole number of free persons, and "three-fifths of all other persons," thus securing political power on account of their slaves, in consideration that direct taxes should be apportioned in the same way. Direct taxes have been imposed at only four brief intervals. The political power has been constant, and, at this moment, sends twenty one members to the other House.

There was a third compromise, which cannot be mentioned without shame. It was that hateful bargain by which Congress were restrained until 1808 from the prohibition of the foreign slave trade, thus securing, down to that period, toleration for crime. This was pertinaciously pressed by the South, even to the extent of an absolute restraint on Congress. John Rutledge said: "If the Convention thinks North Carolina, South Carolina, and Georgia, will ever agree to this plan [the Federal Constitution] unless their right to import slaves be untouched, the expectation is vain. The people of those States will never be such fools as to give up so important an interest." Charles Pinckney said: "South Carolina can never receive the plan [of the Constitution] if it prohibits the slave trade." Charles Cotesworth Pinckney "thought himself bound to declare candidly that he did not think South Carolina would stop her importation of slaves in any short time." The effrontery of the slaveholders was matched by the cordidness of the Eastern members, who yielded again. Luther Martin, the eminent member of the Convention, in his contemporary address to the Legislature of Maryland, has described the compromise. "I found," he says, "that the Eastern members, notwithstanding their aversion to Slavery, were very willing to indulge the Southern States, at least with a temporary liberty to prosecute the slave trade, *provided the Southern States would in their turn gratify them, by laying no restriction on navigation acts*." The bargain was struck, and at this price the Southern States gained the detestable indulgence. At a subsequent day, Congress branded the slave trade as piracy, and thus, by solemn legislative act, adjudged this compromise to be felonious and wicked.

Such are the three chief original compromises of the Constitution and essential conditions of Union. The case of fugitives from labor is not of these. During the Convention, it was not in any way associated with these. Nor is there any evidence, from the records of this body, that the provision on this subject was regarded with any peculiar interest. As its absence from the Articles of Confederation had not been the occasion of solicitude or desire, anterior to the National Convention, so it did not enter into any of the original plans of the Constitution. It was introduced at a late period of the Convention, and with very little and most casual discussion, adopted. A few facts will show unfounded are the recent assumptions.

The National Convention was convoked to meet at Philadelphia on the second Monday in May, 1787. Several members appeared at this time: but a majority of the States not being represented, those present adjourned from day to day until the 25th, when the Convention was organized by the choice of George Washington, as President. On the 28th, a few brief rules and orders were adopted. On the next day they commenced their great work.

On this day Edmund Randolph, of slaveholding Virginia, laid before the Convention a series of sixteen resolutions, containing his plan for the establishment of a new National Government. Here was no allusion to fugitive slaves.

On the same day, Charles Pinckney, of slave-holding South Carolina, laid before the Convention what is called "a draft of a Federal Government, to be agreed upon between the free and independent States of America," an elaborate paper, marked by considerable minuteness of detail. Here are provisions, borrowed from the Articles of Confederation, securing to citizens of each State equal privileges in the several States; giving faith to the public records of the States; and ordaining the surrender of fugitives from justice. But this draft, though from the flaming guardian of the slave interest contained no allusion to fugitive slaves.

In the course of the Convention other plans were brought forward; on the 15th of June a series of eleven propositions by Mr. Patterson, of New Jersey, "so as to render the Federal Constitution adequate to the exigencies of Government, and the preservation of the Union;" on the 18th of June, eleven propositions by Mr. Hamilton, of New York, "containing his ideas of a suitable plan of Government for the United States;" and on the 19th June, Mr. Randolph's resolutions, originally offered on the 29th May, "as altered, amended, and agreed to in Committee of the Whole House." On the 26th, twenty-three resolutions, already adopted on different days in the Convention, were referred to a "Committee of Detail," to be reduced to the form of a Constitution. On the 6th August this committee reported the finished draft of a Constitution. And yet in all these resolutions, plans, and drafts, *seven* in number, proceeding from eminent members and from able committees, no allusion was made to fugitive slaves. For three months the Convention was in session, and not a word uttered on this subject.

At last, on the 28th August, as the Convention was drawing to a close, on the consideration of the article providing for the privileges of citizens in different States, we meet the first reference to this matter, in words worthy of note: "Gen. [Charles Cotesworth] Pinckney was not satisfied with it. He SEEMED to wish some provision should be included in favor of property in slaves." But he made no proposition. Unwilling to shock the Convention and uncertain in his own mind, he only *seemed* to wish such a provision. In this vague expression of a vague desire this idea first appeared. In this modest, hesitating phrase is the germ of the audacious unhesitating Slave Act. Here is the little vapor, which has since swollen, as in the Arabian tale, to the power and dimensions of a giant. The next article under discussion provided for the surrender of fugitives from justice. Mr. Butler and Mr. Charles Pinckney, both from South Carolina, now moved openly to require "fugitive slaves and servants to be delivered up like criminals." Here was no disguise. With Hamlet it was now said in spirit—

Seems, madam, nay, it is; I know not seems.

But the very boldness of the effort drew attention and opposition. Mr. Wilson, of Pennsylvania, at once objected: "This would oblige the Executive of the State to do it at the public expense." Mr. Sherman, of Connecticut, "saw no more propriety in the public seizing and surrendering a slave or servant than a horse." Under the pressure of these objections the offensive proposition was quietly withdrawn. The article for the surrender of criminals was then adopted. On the next day, August 29th, profiting by the suggestions already made, Mr. Butler moved a proposition—substantially like that now found in the Constitution—not directly for the surrender of 'fugitives slaves,' as originally proposed out of "fugitives from service or labor," which, without debate, or opposition of any kind, was unanimously adopted.

The provision, which showed itself thus tardily and was so slightly noticed in the National Convention, was neglected in much of the contemporaneous discussion before the people. In the Conventions of S. Carolina, N Carolina and Virginia, it was commended as securing important rights, though on this point there was a difference of opinion. In the Virginia Convention, an eminent character, Mr. George Mason, with others expressly declared that there was "no security of property coming within this section." In the other Conventions it was disregarded. Massachusetts, while exhibiting peculiar sensitiveness at any responsibility for Slavery, seemed to view it with unconcern. The Federalist, (No. 42,) in its classification of the powers of Congress, describes and groups a large numbers as those "which provide for the harmony and proper intercourse among the States," and therein speaks of the power over public records standing next in the Constitution to the provision on fugitives from labor; but it fails to recognise the latter among the means of promoting that "harmony and proper intercourse;" nor does it any where allude to the provision.

The indifference which had thus far attended this subject still continued. The earliest act of Congress, passed in 1793, drew little attention. It was not originally suggested by any difficulty or anxiety touching fugitives from labor; nor is there any record of the times, in debate or otherwise, showing that any special importance was attached to its provisions in this regard. The attention of Congress had been directed to fugitives from justice, and, with little deliberation, it undertook in the same bill to provide for both classes of cases. In this accidental manner was legislation on this subject first attempted.

There is no evidence that fugitives were often seized under this act. From a competent inquirer we learn that twenty-six years elapsed before a single slave was surrendered under it in any Free State. It is certain that, in a case at Boston, towards the close of the last century, illustrated by Josiah Quincy as counsel, the crowd about the magistrate at the examination quietly and spontaneously opened a way for the fugitive, and thus the Act failed to be executed. It is also certain that, in Vermont, at the beginning of the century, a Judge of the Supreme Court of this State on application for the surrender of an alleged slave, accompanied by documentary evidence, refused to comply unless the master could show a Bill of Sale from the Almighty

cussions of this subject, has thus far been unnoticed, is chiefly remarkable as the earliest recorded evidence of the unwarrantable assertion, now so common, that this provision was originally of vital importance to the peace and harmony of the country.

At last, in 1850, we have another Act, passed by both Houses of Congress and approved by the President, familiarly known as the Fugitive Slave Bill. As I read this statute I am filled with painful emotions.—The masterly subtlety with which it is drawn, might challenge admiration, if exerted for a benevolent purpose; but in an age of sensibility and refinement, a machine of torture, however skilful and apt, cannot be regarded without horror. Sir, in the name of the Constitution which it violates; of my country which it dishonors; of Humanity which it degrades; of Christianity which it offends, I arraign this enactment, and now hold it up to the judgment of the Senate and the world. Again I shrink from no responsibility. I may seem to stand alone; but all the patriots and martyrs of history, all the Fathers of the Republic, are with me. Sir, there is no attribute of God which does not unite against this Act.

But I am to regard it now chiefly as an infringement of the Constitution. And here its outrages, flagrant as manifold, assume the deepest dye and broadest character only when we consider that by its language it is not restrained to any special race or class, to the African or to the person with African blood; but that any inhabitant of the United States, of whatever complexion or condition, may be its victim. Without discrimination of color even, and in violation of every presumption of freedom, the Act surrenders all, who may be claimed as "owing service or labor" to the same tyrannical proceedings. If there be any, whose sympathies are not moved for the slave, who do not cherish the rights of the humble African, struggling for divine Freedom, as warmly as the rights of the white man, let him consider well that the rights of all are equally assailed. "Nephew," said Algernon Sidney in prison, on the night before his execution, "I value not my own life a chip, but what concerns me is that *the law* which takes away my life may hang every one of you, whenever it is thought convenient."

Though thus comprehensive in its provisions and applicable to all, there is no safeguard of Human Freedom which it does not set at naught.

It commits this great question—than which none is more sacred in the law—not to a solemn trial; but to summary proceedings.

It commits this question—not to one of the high tribunals of the land—but to the unaided judgment of a single petty magistrate.

It commits this question to a magistrate, appointed, not by the President with the consent of the Senate, but by the Court; holding his office, not during good behaviour, but merely during the will of the Court; and receiving, not a regular salary, but fees according to each individual case.

It authorizes judgment on *ex parte* evidence, by affidavits, without the sanction of cross-examination.

It denies the writ of Habeas Coprus, ever known as the Palladium of the citizen.

Contrary to the declared purposes of the framers of the Constitution, it sends the fugitive back "at the public expense."

Adding meanness to the violation of the Constitution, it bribes the Commissioner by a double fee to pronounce against Freedom. If he dooms a man to Slavery, the reward is ten dollars; but, saving him to Freedom, his dole is five dollars.

The Constitution expressly secures the "free exercise of religion;" but this Act visits with unrelenting penalties the faithful men and women, who may render to the fugitive that countenance, succor, and shelter, which in their conscience "religion" seems to require.

As it is for the public weal that there should be an end of suits, so by the consent of civilized nations, these must be instituted within fixed limitations of time; but this Act, exalting Slavery above even the practical principle of universal justice, ordains proceedings against Freedom without any reference to lapse of time.

Glancing only at these points, and not stopping for argument, vindication or illustration, I come at once upon the two chief radical objections to this Act, identical in principle with those brought by our Fathers against the British Stamp Act; *first*, that it is a usurpation by Congress of powers not granted by the Constitution, and an infraction of rights secured to the States; and, *secondly*, that it takes away Trial by Jury in a question of Personal Liberty and a suit at common law. Either of these objections, if sustained, strikes at the very root of the Act. That it is obnoxious to both seems beyond doubt.

But here, at this stage, I encounter the difficulty, that these objections have been already foreclosed by the legislation of Congress and by the decisions of the Supreme Court; that as early as 1793 Congress assumed power over this subject by an Act, which failed to secure Trial by Jury, and that the validity of this Act under the Constitution has been affirmed by the Supreme Court. On examination this difficulty will disappear.

The Act of 1793 proceeded from a Congress that had already recognised the United States Bank, chartered by a previous Congress, which, though sanctioned by the Supreme Court, has been since in high quarters pronounced unconstitutional. If it erred as to the Bank, it may have erred also as to fugitives from labor. But the very Act contains a capital error on this very subject, so declared by the Supreme Court, in pretending to vest a portion of the judicial power of the Nation in State officers. This error takes from the Act all authority as an interpretation of the Constitution. I dismiss it.

The decisions of the Supreme Court are entitled to great consideration, and will not be mentioned by me except with respect. Among the memories of my youth are happy days in which I sat at the feet of this tribunal, while Marshall presided, with Story by his side. The pressure now proceeds from the case of *Prigg vs. Pennsylvania*, (16 Peters. 539,) wherein the power of Congress over this matter is asserted. Without going into any minute criticism of this judgment, or considering the extent to which it is extra-judicial, and therefore of no binding force, all which has been already done at the bar in one State, and by an able court in another; but conceding to it a certain degree of weight as a rule to the judiciary on this particular point, still it does not touch the grave question arising from the denial of Trial by Jury. This judgment was pronounced by Mr. Justice Story. From the interesting biography of this great jurist, recently published by his son, we derive the distinct statement that the necessity of Trial by Jury was not before the Court; so that, in the estimation of the Judge himself, it was still an open question. Here are the words:

"One prevailing opinion, which has created great prejudice against this judgment, is, that it denies the right of a person claimed as a fugitive from service or labor to a trial by jury. This mistake arises from supposing the case to involve the general question as to the constitutionality of the Act of 1793. But in fact no such question was in the case; and the argument that the Act of 1793 was unconstitutional, because it did not provide for a trial by jury according to the requisitions of the sixth article in the amendments to the Constitution, having been suggested to my father on his return from Washington, he replied that this question was not argued by counsel nor considered by the Court, and that he should still consider it an open one."

But whatever may be the influence of this judgment as a rule to the judiciary, it cannot arrest our duty as legislators. And here I adopt with entire assent the language of President Jackson, in his memorable Veto, in 1832, of the Bank of the United States. To his course was opposed the authority of the Supreme Court, and this is his reply:

"If the opinion of the Supreme Court covers the whole ground of this Act, it ought not to control the coordinate authorities of this Government. The Congress, the Executive, and the Court, must each for itself be guided by its own opinion of the Constitution. *Each public officer, who takes an oath to support the Constitution, swears that he will support it as he understands it, and not as it is understood by others*. It is as much the duty of the House of Representatives, of the Senate, and the President, to decide upon the constitutionality of any bill or resolution, which may be presented to them for passage or approval, as it is of the Supreme Judges when it may be brought before them for judicial decision. The authority of the Supreme Court must not, therefore, be permitted to control the Congress or the Executive, when acting in their legislative capacities, but to have only such influence as the force of their reasoning may deserve."

With these authoritative words of Andrew Jackson I dismiss this topic. The early legislation of Congress and the decisions of the Supreme Court cannot stand in our way. I advance to the argument.

(1.) *Now, first, of the power of Congress over this subject*.

The Constitution contains *powers* granted to Congress, *compacts* between the States, and *prohibitions* addressed to the Nation and to the States. A compact or prohibition may be accompanied by a power; but not nessarily, for it is essentially distinct in its nature.—And here the single question arises, whether the Constitution, by grant, general or special, confers upon Congress any power to legislate on the subject of fugitives from labor.

The whole legislative power of Congress is derived from two sources; first from the general grant of power, attached to the long catalogue of powers, "to make all laws which shall be necessary and proper for the carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof;" and secondly, from special grants in other parts of the Constitution. As the provision in question does not appear in the catalogue of powers and does not purport to vest any power in the Government of the United States, or in any department or officer thereof, no power to legislate on this subject can be derived from any special grant, nor can any such power be derived from any other part of the Constitution; for none such exists. The conclusion must be, that no power is delegated to Congress over the surrender of fugitives from labor.

In all contemporary discussions and comments, the Constitution was constantly justified and recommended, on the ground that the powers not given to the Government are withheld from it. If under its original provisions any doubt could have existed on this head, it was removed, so far as language could remove it, by the Tenth Amendment, which, as we have already seen, expressly declares that, "the powers *not delegated* to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." Here on the simple text of the Constitution I might leave this question. But its importance justifies a more extended examination in a two-fold light; *first*, in the history of the Convention, revealing the unmistakeable intention of its members; and *secondly*, in the true principles of our Political System, by which the powers of the Nation and of the States are respectively guarded.

Look first at the *history of the Convention*. The articles of the old Confederation, adopted by the Continental Congress 15th November, 1777, though containing no reference to fugitives from labor, had provisions substantially like those in our present Constitution, touching the privileges of citizens in the several States, the surrender of fugitives from justice and the credit due to the public records of States. But, since the Confederation had no powers not "expressly delegated," and as no power was delegated to legislate on these matters, they were nothing more than articles of